

August 3,2005

Doug Cordiner
Audit Principal
California Bureau of State Audits
[Address Redacted]
Sacramento, CA 95814

**Re: Your Request for General Information
Our File No. G-05-118**

Dear Mr. Cordiner:

This letter is in response to your request for general information regarding the applicability of the economic disclosure provisions of the Political Reform Act (the “Act”).¹ We are issuing the letter, in accordance with regulation 18329, subdivision (c)(1), as the Bureau of State Audits, as part of its auditing function, has “a duty to advise other persons relating to their duties or actions under the Act.”

QUESTION

Is a person who is employed by a state agency as a retired annuitant required to file statements of economic interests when serving in a position that is designated in the agency’s conflict of interest code?

CONCLUSION

Yes. An employee of a state agency who serves in a designated position is required to file statements of economic interests, even though employed as a retired annuitant.

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

In the course of conducting an audit you have been reviewing statements of economic interests (Form 700) of designated employees of a state agency. You have observed that some employees of the agency are retired annuitants assigned to positions that are designated in the agency's conflict of interest code. This has led you to ask whether a retired annuitant assigned to a position that is designated in an agency's conflict of interest code would be required to file statements of economic interests.

ANALYSIS

One of the express purposes of the Act, as set forth in section 81002, subdivision (c), is that the assets and income of public officials, which may be materially affected by their official actions, should be disclosed, and in appropriate circumstances, the officials should be disqualified from acting, in order that conflicts of interest may be avoided. To that end, the Act requires specified public officials to disclose their economic interests as provided in sections 87200-87210, and a broader group of public officials to disclose their economic interests as provided in the conflict of interest code of the agency that employs them. (§§ 87300-87302.6). It also prohibits any public official at any level of state or local government from making, participating in making, or attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know that he or she has a financial interest. (§ 87100.) Under section 82048, the term "public official" includes "every member, officer, employee or consultant of a state or local government agency."

Focusing on your precise question, section 87302, subdivision (b) provides that every agency's conflict of interest code must require "each designated employee" to file statements of economic interests "at times and under circumstances described in this section." Under section 82019, subdivision (a), a person qualifies as a "designated employee" if the person is an employee of an agency whose position with the agency is designated in the agency's conflict of interest code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. These sections thus make the duty to file statements of economic interests dependent upon a person being an employee of an agency and serving in a position that is designated in the agency's conflict of interest code. They do not make the duty in any way dependent upon whether the person's circumstance of employment is as a permanent employee, a limited-term employee, a retired annuitant, or any other such designation. The Commission therefore advised the Town of Los Gatos in the *Cosgrove* Advice Letter, I-91-099 that:

"Persons who are performing the duties of a designated officer or employee for the city in an acting or interim capacity are required to file statements of economic interests...pursuant to Government Code Section 87302."

Similarly, an employee of a state agency who serves in a designated position is also required to file statements of economic interests, even though employed as a retired annuitant.²

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Steven Benito Russo
Senior Commission Counsel
Legal Division

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² Moreover, an employee of a state agency who serves as a retired annuitant is a public official who is subject to the section 87100 conflict-of-interest prohibition of the Act. (*Evans* Advice Letter, I-01-143.)